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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

DIMITRITZA TOROMANOVA, an  
Individual,  
  
Plaintiff,  
  
vs.  
  
WELLS FARGO BANK, N.A.; WACHOVIA  
MORTGAGE, FSB; NATIONAL DEFAULT  
SERVICING CORP; and TIFFANY K.  
LABO,  
  
Defendants.

Case No.: 2:12-cv-01637-LRH-(CWH)

**WELLS FARGO BANK, N.A.'S RESPONSE TO  
PLAINTIFF'S OBJECTION TO MAGISTRATE'S ORDERS**

**I. INTRODUCTION**

With another case pending against Wells Fargo Bank, N.A. ("Wells Fargo") and National Default Servicing Corporation ("NDSC") before this Court on identical claims, the plaintiff, Dimitritza Toromanova ("Toromanova"), filed the Complaint initiating this action in state court on August 27, 2012, in which she named Wells Fargo, NDSC, and Tiffany K. Labo ("Labo") as defendants. (Doc. #1-1). On September 18, 2012, Wells Fargo removed the case to this court through its Petition for Removal (Doc. #1). Wells Fargo then responded to the Complaint by filing a Motion to Dismiss and to Expunge Lis Pendens, and Motion for Order Declaring

1 Plaintiff a Vexatious Litigant (Docs. #10, #11, and #12) (the “Wells Motion”) on September 25,  
2 2012. Likewise, NDSC and Labo each responded to the Complaint by filing motions to dismiss  
3 on September 25, 2012 and October 1, 2012 respectively. (Docs. #8 and #14).

4 Toromanova had up to and including October 10, 2012, to file responses to the Wells  
5 Motion and NDSC motion. *See* LR 7-2(b). However, Toromanova did not file a response to  
6 either motion. Instead, on October 10, 2012, Toromanova filed a Motion to Remand. (Doc.  
7 #17). In addition, on October 18, 2012, Toromanova filed a one-page “opposition” to Labo’s  
8 motion (Doc. #19) in which she flatly asserts that this Court does not have jurisdiction over this  
9 matter. On October 26, 2012, Wells Fargo filed its Opposition to Motion Remand (Doc. #20),  
10 which Labo joined (Doc. #21). Toromanova filed her reply on November 5, 2012. (Doc. #23).  
11 Accordingly, Toromanova’s Motion to Remand is fully briefed and ready for decision. In  
12 addition, because Toromanova failed to file points and authorities in response to Wells Motion,  
13 NDSC’s motion to dismiss, or Labo’s motion to dismiss, the Court may treat those motions as  
14 unopposed. *See* LR 7-2(d).

15 On November 1, 2012, Wells Fargo filed a Joint Status Report approved by all parties.  
16 (Doc. #22). Yet, on November 13, 2012 Toromanova filed a Notice of Signature Rescission and  
17 Annulment (Doc. #24) purporting to retract her signature.

18 Because there are three dispositive motions and a motion to remand pending before this  
19 Court, Wells Fargo filed a Motion for Extension of Time to File Stipulated Discovery Plan and  
20 Scheduling Order (the “Motion”) (Doc. #25), which NDSC and Labo joined (Docs. #29 and  
21 #15), in which Wells Fargo asked the Court to postpone discovery until such time as the Court  
22 rules upon the motions. As grounds for its request, Wells Fargo submitted to the Court that  
23 Toromanova fails to state a claim upon which relief can be granted, as this Court has twice  
24 dismissed her claims in two separate actions, and Toromanova failed to file points and  
25 authorities in opposition to the Defendants’ motions.<sup>1</sup> The Court found the Motion meritorious  
26 and entered an Order granting the Motion as to all defendants on November 30, 2012 (the  
27 “Order”) (Doc. #31).

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28 <sup>1</sup> *See* Mot. at ¶¶ 5-8.

1 That same day, Toromanova filed the instant Objection to Magistrate’s Orders (the  
 2 “Objection”) (Doc. #32), in which she raises several arguments against the Order. Specifically,  
 3 Toromanova argues: (1) that Magistrate Judge Hoffman had no authority to rule on the Motion;  
 4 (2) that even if the Magistrate Judge had authority, he erred by staying discovery; and (3) that the  
 5 Court could not rule upon the Motion without first deciding Toromanova’s Motion to Remand.  
 6 Toromanova’s arguments lack merit.

7 First, the Federal Rules of Civil Procedure, the Local Rules, and the United States Code  
 8 all provide Magistrate Judge Hoffman with authority to decide a pretrial motion seeking a stay of  
 9 discovery. Second, because Toromanova failed to file an opposition to Wells Fargo’s motion to  
 10 dismiss—and because this Court has twice dismissed Toromanova’s claims in other actions—  
 11 Magistrate Judge Hoffman’s decision staying discovery cannot be clearly erroneous. Third,  
 12 contrary to Toromanova’s contention, this Court could properly rule upon a motion seeking a  
 13 stay of discovery before it decides Toromanova’s Motion to Remand. Accordingly, Wells Fargo  
 14 respectfully requests that the Court deny the Objection and affirm the Order in its entirety.

## 15 II. ARGUMENT

16 In her Objection, Toromanova asserts that Magistrate Judge Hoffman lacked authority to  
 17 rule on the Motion, as the parties to this action did not consent to have the matter heard by a  
 18 magistrate judge.<sup>2</sup> However, regardless of the parties’ consent, “[a] magistrate judge may hear  
 19 and finally determine any pretrial matter not specifically enumerated as an exception in 28  
 20 U.S.C. § 636(b)(1)(A).”<sup>3</sup> 28 U.S.C. § 636(b)(1)(A) provides that a magistrate judge may “hear  
 21 and determine any pretrial matter pending before the court, except for a motion for injunctive  
 22 relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment  
 23 or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to  
 24 permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can  
 25 be granted, and to involuntarily dismiss an action.” Here, the Motion requested an extension of  
 26 time to file a stipulated discovery plan and scheduling order, which does not fall within any of

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27 <sup>2</sup> See Objection at 2.

28 <sup>3</sup> See LR IB 1-3; see also 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a).

1 the exceptions set forth in 28 U.S.C. § 636(b)(1)(A). Therefore, Magistrate Judge Hoffman  
 2 acted squarely within the scope of authority conferred on him by rule and by statute.<sup>4</sup>

3 Moreover, as set forth in the Motion, the Court may stay discovery pending a decision on  
 4 a dispositive motion if the Court is convinced the plaintiff cannot state a claim for relief.<sup>5</sup>  
 5 Magistrate Judge Hoffman found that Defendants met “the heavy burden of making a strong  
 6 showing why discovery should be denied,” as Toromanova failed to file a response to Wells  
 7 Fargo’s Motion to Dismiss, Motion to Expunge Lis Pendens, and Motion to Declare Plaintiff a  
 8 Vexatious Litigant (Docs. #10, 11, and 12).<sup>6</sup> Therefore, the Order is not clearly erroneous and  
 9 the Court should deny the Objection.

10 Finally, Toromanova argues that this Court could not rule on the Motion without first  
 11 deciding her Motion to Remand, and that the Order goes against the mandate set forth in Fed. R.  
 12 Civ. P. 1 to construe the Rules in a manner to “secure the just, speedy, and inexpensive  
 13 determination of every action.” Yet, Toromanova fails to provide any authority for the  
 14 proposition that her Motion to Remand bars this Court from taking any action with respect to this  
 15 case, or to explain how proceeding with discovery while three motions to dismiss and a motion  
 16 to remand are pending would be more expedient. Although the Court will have to rule on the  
 17 Motion to Remand before ruling on the Defendants’ dispositive motions,<sup>7</sup> the Court has the  
 18 inherent power to manage the cases on its docket and to enter pretrial orders.<sup>8</sup> Because the Court  
 19 will likely deny the Motion to Remand and grant Wells Fargo’s Motion to Dismiss, Wells Fargo  
 20 asked the Court to postpone discovery until the Court rules on the pending motions. Indeed,  
 21 while she is loath to admit it, Toromanova benefits from the Order just as the Defendants do, as  
 22 the Order spares Toromanova from proceeding with discovery before the Court makes a  
 23 determination with respect to its jurisdiction.

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24 <sup>4</sup> *Id.*

25 <sup>5</sup> See Mot. at ¶ 4 (citing *Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 555-56 (D. Nev.  
 26 1997); *Twin City Fire Ins. v. Employers Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989)).

27 <sup>6</sup> See Order at 1:25-2:4.

28 <sup>7</sup> See *County of Nassau v. New York*, 724 F.Supp.2d 295, 300 (E.D.N.Y. 2010).

<sup>8</sup> See, e.g., *U.S. v. W.R. Grace*, 526 F.3d 499, 508-509 (9th Cir. 2008).

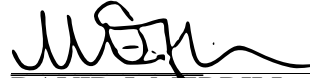
**III. CONCLUSION**

For the foregoing reasons, Wells Fargo respectfully requests that the Court uphold the Order and rule upon the Wells Motion.

DATED this 14th day of December 2012.

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By:



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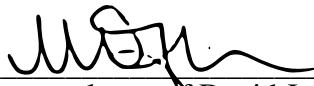
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Attorneys for WELLS FARGO BANK, N.A.

**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 14th day of December 2012, service of the foregoing Wells Fargo Bank, N.A.'s Response to Plaintiff's Objection to Magistrate's Orders was made to all counsel in the action through the Court's CM/ECF system. In addition, service was made by placing a copy in the United States Mail, postage prepaid and addressed to the following at their last known addresses:

Dimitritza Toromanova  
Post Office Box 19153  
Las Vegas, Nevada 89132

  
An employee of David J. Merrill, P.C.